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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,737	10/15/2003	Richard A. Rubin	97,022-D1-CO	6145

20306 7590 01/13/2006

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EXAMINER

SKIBINSKY, ANNA

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Specie Election

The previous restriction requirement for claims 1-39, filed December 16, 2005 is withdrawn. The following restriction requirement is for amended claims 40-43. One specie election from *each* of groups A and B is required.

Specie A

Specie A1: drawn to live cells (e.g. claim 41)

Specie A2: drawn to not-live cells

The Species are distinct due to the distinct possible state of the cells where often times, tagged cells can be dead or dormant and not live. The use live cells versus not-live (e.g. dead cells) would impact the timing and conditions in the method. The cell surface receptor proteins would be expected to behave differently in live cells and not-live cells. If the species are searched together, this presents a different and clearly distinct search burden, which is undue. Currently, claims 40, 42, and 43 are generic to this species.

Specie B

Specie B1: wherein imaging multiple cells in the array of locations includes generating high/low resolution images (e.g. claim 43)

Specie B2: non-imaging measurements, not obtaining the claim 43 high/low resolutions image.

The species are distinct due to the distinct methods measuring internalization of cell surface receptors proteins. One method requires the measuring of light intensity with no particular other criteria and the other requires the measuring of both light intensity and high/low resolution images. If the species are searched together, this presents a different and clearly distinct search burden, which is undue. Currently, claims 40-42 are generic to this species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Art Unit: 1631

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

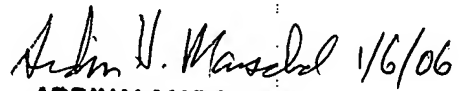
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Skibinsky whose telephone number is (571) 272-4373. The examiner can normally be reached on 8 am - 5:30 pm.

Art Unit: 1631

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER